

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN FREMPONG-ATUAHENE, et al. : CIVIL ACTION  
:   
v. :   
:   
CITY OF PHILADELPHIA, et al. : NO. 98-1359

**MEMORANDUM AND ORDER**

HUTTON, J.

DECEMBER 14, 1999

Currently before the Court are Plaintiff's Motion for Enlargement of Time to File Plaintiff's Motion for Reconsideration of this Court's Order of October 1999 (Docket No. 26) and Defendants' Response thereto. Also before the Court are Plaintiff's Motion to Amend and/or Supplement Original Pleadings (Docket No. 21) and Defendants' response thereto (Docket No. 22). For the reasons stated hereafter, each of Plaintiff's motions is denied.

**I. BACKGROUND**

In its Memorandum and Order ("Order") of October 28, 1999, the Court set forth in great detail the facts and procedural background of this case. The Court therefore refers the reader to said Order for a complete recitation of the events that preceded Plaintiff's filing of the instant motions. For the benefit of the reader, however, the Court notes that said Order , dismissed Plaintiff's

Complaint in its entirety. The Court now considers Plaintiff's motions.

## II. DISCUSSION

### A. Plaintiff's Motion for Enlargement of Time

On November 8, 1999, pro se Plaintiff<sup>1</sup> filed a motion with the following caption: Plaintiff's Motion for Enlargement of Time to File Plaintiff's Motion for Reconsideration of this Court's Order of October 1999.

A motion for enlargement of time is governed by Federal Rule of Civil Procedure 6(b). As plaintiff filed said Motion in a timely manner, the Court considers it under Rule 6(b)(1) which states in pertinent part as follows:

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified period of time, the court for cause shown may at any time in its discretion . . . with or without motion or notice order the period enlarged . . . .

Fed. R. Civ. P. 6(b)(1).

Plaintiff does not show cause. Indeed, Plaintiff provides no basis whatsoever for his request that the filing period be extended thirty days. Moreover, the purported Memorandum of Law attached to the instant Motion does not show cause but rather discusses both

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<sup>1</sup>/ While Plaintiff is pro se, he us a frequent litigant before this Court.

the Plaintiff's belief that this Court made errors of law in its Order, and his reasoning in support thereof. Accordingly, as Plaintiff provides no basis for this Court to grant an enlargement of time and the court cannot deduce sufficient grounds on which to grant said Motion, Plaintiff's Motion is denied to the extent that it requests such an enlargement.

Ultimately, however, Plaintiff's Motion requests reconsideration.<sup>2</sup> Plaintiff's Memorandum of Law (and Exhibit A, which is attached thereto) specifically set forth the errors of law that Plaintiff believes this Court committed when it dismissed his Complaint. Therefore, the Court also evaluates Plaintiff's Motion as one for reconsideration.

Motions for reconsideration are not expressly authorized by the Federal Rules of Civil Procedure. Accordingly, it is unsettled among the courts how to treat motions to reconsider:

The [United States] Supreme Court has noted that "[s]uch a motion is not recognized by any of the Federal Rules of Civil Procedure. The Third Circuit has sometimes ruled on such motions under Federal Rule of Civil Procedure 59(e) and at other times under Rule 60(b). A motion to reconsider may, therefore, be treated as a Rule 59(e) motion for amendment of judgment or a Rule 60(b) motion for relief from judgment or order.

Broadcast Music, Inc. v. La Trattoria E., Inc., No. CIV.A. 95-1784,

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<sup>2</sup>/ Plaintiff's Memorandum of Law states as follows: "The Court on October 29, 1999 issued an order granting Defendant's Motion to Dismiss Plaintiff's Complaint. Plaintiff submits that the Court erred in its decision and would like an opportunity to file Motion for Reconsideration. . . . Plaintiff's Statement of Issues to be Raised on Motion for Reconsideration is attached hereto as Exhibit A'." (Pl.'s Mem. of Law at 1-2).

1995 WL 552881, at \*1 (E.D. Pa. Sept. 15, 1995). In this matter, the Court analyzes the Plaintiff's Motion pursuant to Rule 59(e).

Federal Rule of Civil Procedure 59(e) provides in relevant part that "[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." Fed. R. Civ. P. 59(e). Generally, a motion for reconsideration will only be granted if: (1) there has been an intervening change in controlling law; (2) new evidence, which was not previously available, has become available; or (3) it is necessary to correct a clear error of law or to prevent manifest injustice. See Reich v. Compton, 834 F. Supp. 753, 755 (E.D. Pa. 1993) (citing Dodge v. Susquehanna Univ., 796 F. Supp. 829, 830 (M.D. Pa. 1992)), aff'd in part, rev'd in part, 57 F.3d 270 (3d Cir. 1995); McDowell Oil Serv., Inc. v. Interstate Fire & Cas. Co., 817 F. Supp. 538, 541 (M.D. Pa. 1993). Furthermore,

"With regard to the third ground,... any litigant considering bringing a motion to reconsider based upon that ground should evaluate whether what may seem to be a clear error of law is in fact simply a disagreement between the Court and the litigant." Motions for reconsideration should not relitigate issues already resolved by the court and should not be used "to put forward additional arguments which [the movant] could have made but neglected to make before judgment."

Compton, 834 F. Supp. at 755 (quotations and citations omitted). It must be stressed that a motion for reconsideration is not a method to reargue issues already considered and disposed of by the court. See McDowell Oil Service v. Interstate Fire & Casualty Co.,

817 F. Supp. 538, 541 (M.D. Pa. 1993).

In the instant motion, Plaintiff does not allege that there has been any change in controlling law or that there is any newly discovered evidence. Moreover, Plaintiff does not assert that the Court must act to prevent manifest injustice. Plaintiff can only succeed, therefore, on the third ground for reconsideration, to "correct a clear error of law" resulting from its earlier order on Defendants' Motion to Dismiss. See Walker v. Spiller, No. CIV.A. 97-6720, 1998 WL 306540, at \*2 (E.D. Pa. Jun.9, 1998) (citing Smith, 155 F.R.D. at 96- 97). While Plaintiff does not state precisely that this Court's previous rulings were a clear error of law, such is the premise of his Memorandum of Law.

The Court finds that Plaintiff's Motion is merely an attempt to reargue the issues disposed of by the Court's Order of October 28, 1999.\<sup>3</sup> As the Court finds that Plaintiff's's arguments were fully resolved in said Order, the Court will not reconsider that Order. Plaintiff's Motion is denied to the extent that it requests reconsideration.\<sup>4</sup>

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<sup>3</sup>/ Plaintiff cites the following as examples of the Court's errors: (1) "This Court [sic] statements that 'a taking does not violate a constitutional right unless just compensation is denied' is erroneous;" (2) "The statement that this Court does not have subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(6)(1) because Plaintiffs [sic] § 1983 claims are premature is erroneous;" (3) "this Court applied the wrong legal concepts;" and (4) "this Court cannot abstain from exercising its properly invoked diversity of citizenship jurisdiction in [sic] state takings case." (Pl.'s Mem. of Law, Ex. A. at 1-2). The Court refuses to allow Plaintiff to reargue previously decided issues at the expense of scarce judicial resources and Defendants' time, efforts, and energy.

<sup>4</sup>/ The Court emphasizes, as it did in its October 28, 1999, Memorandum and Order, that Plaintiff is not completely foreclosed from seeking judicial relief but that such relief must first be sought in state court. Therefore, in denying Plaintiff's request

**B. Plaintiff's Motion to Amend and/or Supplement Original Pleadings**

As the Court dismissed Plaintiff's Complaint on October 28, 1999 and denies in this Memorandum and Order Plaintiff's motion which seeks reconsideration, Plaintiff's Motion to Amend and/or Supplement Pleadings is moot. Accordingly, said Motion is denied.

An appropriate Order follows.

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for reconsideration, Plaintiff remains free to seek appropriate relief in state court.

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O R D E R

AND NOW, this 14<sup>th</sup> day of December, 1999, upon consideration of Plaintiff's Motion for Enlargement of Time to File Plaintiff's Motion for Reconsideration of this Court's Order of October 1999 (Docket No. 26), Defendants' Response thereto, Plaintiff's Motion to Amend and/or Supplement Original Pleadings (Docket No. 21), and Defendants' response thereto (Docket No. 22), IT IS HEREBY ORDERED that:

(1) Plaintiff's Motion for Enlargement of Time to File Plaintiff's Motion for Reconsideration of this Court's Order of October 1999 (Docket NO. 26) is **DENIED with prejudice**; and

(2) Plaintiff's Motion to Amend and/or Supplement Original Pleadings (Docket No. 21) is **DENIED as moot**.

BY THE COURT:

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HERBERT J. HUTTON, J.